DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor

FEDERAL COURT (KUALA LUMPUR) — SPECIAL CASE NO 02 OF 2001
AHMAD FAIRUZ CJ (MALAYA), HAIDAR FCJ AND DENIS ONG JCA
6 FEBRUARY 2002

Constitutional Law — *Constitution — Federal Constitution — Commencement of action by plaintiff in High Court — Plaintiff subsequently appointed as Regent of State of Selangor to exercise functions as Sultan — Whether plaintiff was Ruler for purposes of arts 181, 182 and 183 of Federal Constitution — Definition of Ruler in art 160 of Federal Constitution*

Statutory Interpretation — *Construction of statutes — Purposive approach — Ambiguity — Literal approach to interpretation gave rise to different interpretations of Ruler for art 181(2) and arts 182 and 183 of the Federal Constitution — Whether purposive approach to be taken — Interpretations Acts 1948 and 1967 s 17A*

Words and Phrases — *'Ruler' — Federal Constitution art 160*

On 6 May 1998, the plaintiff, the Regent of the State of Selangor, filed a writ of summons and statement of claim at the High Court against the defendants. The defendants then filed their defence and counterclaim. Subsequently, the plaintiff was appointed Regent of Selangor to exercise the functions as 'Sultan' when the Regent's father, DYMM Sultan Salahuddin Abdul Aziz Shah Ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed to the throne as the 11th Yang di-Pertuan Agong. This was a reference to the Federal Court by the High Court pursuant to s 84 of the Courts of Judicature Act 1964 in respect of the constitutional question of whether the plaintiff was a 'Ruler' for the purposes of arts 181, 182 and 183 of the Federal Constitution, having regard to the definition of the word 'Ruler' in art 160 of the Federal Constitution ('the Constitution').

Held:

(1) The plaintiff who was appointed to exercise the functions as 'Sultan' was not a 'Ruler' for the purposes of arts 181, 182 and 183 of the Constitution (see p 18B).

(2) 'Ruler' was defined under art 160(2) of the Constitution as including, '... except in cl (2) of art 181 and the Third and Fifth Schedules, any person who in accordance with the Constitution of that State exercises the functions of the Ruler'. The original cl (2) of art 181 provided that: 'No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity'. By the Constitution (Amendment) Act 1993, cl 2 of art 181 was amended by the insertion of the words 'except in the special court established under Part XV' after the word 'capacity' (see p 18F–I); *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 followed.

(3) Therefore, although the definition of 'Ruler' in art 160(2) included 'a person who in accordance with the Constitution of that state exercises the functions of the Ruler', it excluded such person from being a Ruler for the purpose of art 181(2) in regard to judicial immunity. Such exclusion was effected by the words 'except in art 181(2)' (see p 19G–H).

(4) Even with the meaning of 'Ruler' in art 160(2) of the Constitution remaining intact, if a literal approach to interpretation were taken, the same would give rise to different interpretations of 'Ruler' for art 181(2) on the one hand and arts 182 and 183 on the other. A Regent exercising the functions of the Ruler was not a Ruler for the purpose of art 181(2), the Third and the Fifth Schedules and hence could be sued in the ordinary courts because the establishment of the special court was exclusively reserved to the Rulers personally in respect of actions in their personal capacity. However, for the purposes of arts 182 and 183, the Regent exercising the functions of the Ruler was a Ruler and could sue or be sued in the special court (see p 23C–F).

(5) In order to resolve the ambiguity caused by the interpretation, it was necessary to consider the purpose or object of establishing the special courts, that is, whether the exclusive jurisdiction of the special court to try offences committed by the Ruler and all civil cases by or against the Ruler was extended to a person exercising the functions of the Ruler as in the case of the plaintiff here (see p 24C).

(6) A purposive approach had been given statutory recognition by the Parliament in enacting s 17A of the Interpretations Acts 1948 and 1967, which provided that: 'in the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object was expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object'. In view of the statutory recognition, the court could and should adopt a purposive approach in the interpretation of 'Ruler' for the purposes of arts 181, 182 and 183 of the Constitution. In pursuing the purposive approach, one of the matters that could assist the court in interpreting the amended arts 181(2), 182 and 183 of the Constitution was to refer to the Parliamentary reports or *Hansard* (see p 21A–D); *United Hokkien Cemeteries, Penang v Majlis Bandaran, Pulau Pinang* [1979] 2 MLJ 121 and *Lam Kong Co Ltd v Thong Guan Co Ptd Ltd* [2000] 4 MLJ 1 followed.

(7) Based on the original Bill to amend the Constitution, it was clear that the intention of the legislature was to remove altogether the legal immunity hitherto given to the Ruler of a State. This meant that any legal proceedings by or against the Ruler in his personal capacity would be within the jurisdiction of the ordinary courts just like the ordinary citizen. That Bill was accordingly passed by

Parliament but when it was sent to the Yang di-Pertuan Agong for His Highness's assent, the Conference of Rulers, through the Yang di-Pertuan Agong, gave the reasons why no assent could be given and suggested amendments for the consideration of Parliament. Subsequently, taking into consideration the proposals of the Conference of Rulers, the Prime Minister moved in Parliament for art 181(2) of the Federal Constitution to be amended and arts 182 and 183 to be added. The proposed amendments and additions were subsequently passed by Parliament (see pp 25G–26A).

(8) From a perusal of the Prime Minister's speech, it was clear that no mention was made at all that the exclusive jurisdiction given to the special court to the exclusion of the ordinary courts in respect of the Ruler was to include a person exercising the functions of the Ruler (see p 26C).

[Bahasa Malaysia summary

Pada 6 Mei 1998, plaintif, Pemangku Raja Negeri Selangor, telah memfailkan satu writ saman dan pernyataan tuntutan di Mahkamah Tinggi terhadap defendan-defendan. Defendan-defendan kemudiannya memfailkan pembelaan dan tuntutan balas mereka. Berikutan itu, plaintif telah dilantik Pemangku Raja Selangor untuk melaksanakan fungsi-fungsi sebagai 'Sultan' ketika bapa Pemangku Raja tersebut, DYMM Sultan Salahuddin Abdul Aziz Shah Ibni Al-Marhum Sultan Hisamuddin Alam Shah dilantik ke takhta sebagai Yang di Pertuan Agong ke-11. Ini merupakan satu rujukan kepada Mahkamah Persekutuan oleh Mahkamah Tinggi selaras dengan s 84 Akta Mahkamah-Mahkamah Kehakiman 1964 berhubung persoalan perlembagaan sama ada plaintif yang merupakan 'Raja' bagi tujuan artikel-artikel 181, 182 dan 183 Perlembagaan Persekutuan, dengan menimbangkan definisi perkataan 'Raja dalam artikel 160 Perlembagaan Persekutuan.

Diputuskan:

(1) Plaintif yang telah dilantik untuk melanksanakan fungsi-fungsi sebagai 'Sultan' bukannya seorang 'Raja' bagi tujuan artikel-artikel 181, 182 dan 183 Perlembagaan Persekutuan (lihat ms 18B).

(2) 'Raja' telah ditakrifkan di bawah artikel 160(2) Perlembagaan Persekutuan sebagai termasuk, '... kecuali di dalam fasal (2) artikel 181 dan Jadual-Jadual Ketiga dan Kelima, mana-mana orang yang menurut Perlembagaan Negeri itu melaksanakan fungsi-fungsi 'Raja'. Peruntukan asal fasal (2) artikel 181 memperuntukkan bahawa: 'Prosiding apa sekalipun tidak boleh dimulakan dalam mana-mana mahkamah terhadap Raja sesebuah Negeri dalam kedudukan peribadinya'. Melalui Akta

Perlembagaan (Pindaan) 1993, fasal 2 artikel 181 telah dipinda A
dengan memasukkan perkataan-perkataan 'kecuali di dalam Mahkamah Khas yang ditetapkan di bawah Bahagian Part XV' selepas perkataan 'keupayaan' (lihat ms 18F–I).

(3) Oleh itu, walaupun definisi 'Raja' dalam artikel 160(2) termasuk 'seseorang yang menurut Perlembagaan Negeri itu melaksanakan B
fungsi-fungsi Raja', ia mengecualikan orang yang sedemikian daripada menjadi Raja bagi tujuan artikel 181(2) berhubung dengan kekebalan kehakiman. Kekecualian yang sedemikian dikuatkuasakan oleh perkataan-perkataan 'kecuali dalam artikel 181(2)' (lihat ms 19G–H).

C
(4) Meskipun makna 'Raja' di dalam artikel 160(2) Perlembagaan Persekutuan kekal, jika ditafsirkan secara harafiah, perkara yang sama akan membangkitkan pentafsiran berlainan bagi 'Raja' untuk artikel 181(2) di satu bahagian dan artikel-artikel 182 dan 183 di bahagian yang lain. Seseorang Pemangku raja yang melaksanakan fungsi-fungsi Raja bukannya merupakan seorang D
Raja bagi tujuan artikel 181(2), Jadual-Jadual Ketiga dan Kelima dan oleh itu boleh didakwa di mahkamah biasa kerana penubuhan Mahkamah Khas telah secara eksklusifnya dihadkan kepada Raja-Raja secara peribadi berhubung tindakan-tindakan menurut keupayaan peribadi mereka. Walau bagaimanapun, bagi tujuan artikel-artikel 182 dan 183, Pemangku Raja tersebut yang E
melaksanakan fungsi-fungsi Raja adalah seorang Raja dan boleh mendakwa atau didakwa dalam Mahkamah Khas (lihat ms 23C–F).

(5) Demi untuk menyelesaikan kekaburan yang disebabkan oleh pentafsiran tersebut, adalah perlu untuk menimbangkan tujuan F
atau matlamat menubuhkan Mahkamah-Mahkamah Khas tersebut, iaitu, sama ada bidang kuasa eksklusif Mahkamah Khas untuk membicarakan kesalahan-kesalahan yang dilakukan oleh Raja dan semua kes sivil oleh atau terhadap Raja telah dilanjutkan kepada seseorang yang melaksanakan fungsi-fungsi Raja seperti mana dalam kes plaintif di sini (lihat ms 24C). G

(6) Pendekatan yang menitikberatkan tujuan statut tersebut telah diberikan pengiktirafan berkanun oleh Parlimen dalam menggubalkan s 17A Akta-Akta Pentafsiran 1948 dan 1967, yang memperuntukkan bahawa: 'dalam pentafsiran sesuatu peruntukan suatu Akta, pembentukan yang akan memajukan H
tujuan atau matlamat di sebalik Akta tersebut (sama ada tujuan atau matlamat itu telah dinyatakan dengan nyatanya dalam Akta tersebut atau tidak) akan lebih diutamakan berbanding suatu pembentukan yang tidak akan memajukan tujuan atau matlamat itu'. Memandangkan pengiktirafan berkanun tersebut, mahkamah boleh dan haruslah menerima-pakai pendekatan yang I
menitikberatkan tujuan dalam pentafsiran 'Raja' bagi tujuan artikel-artikel 181, 182 dan 183 Perlembagaan Persekutuan.

Dalam meneruskan pendekatan yang menitikberatkan tujuan itu, salah satu perkara yang boleh membantu mahkamah mentafsirkan artikel-artikel 181(2), 182 dan 183 Perlembagaan Persekutuan adalah merujuk kepada laporan-laporan Parlimen atau Hansard (lihat ms 21A–D).

(7) Berdasarkan Bil asal untuk meminda Perlembagaan Persekutuan tersebut, jelas bahawa niat perundangan tersebut adalah untuk membatalkan sama sekali kekebalan undang-undang sehingga kini yang telah diberikan kepada Raja sesebuah Negeri. Ini bermakna bahawa apa-apa prosiding undang-undang oleh atau terhadap Raja dalam kedudukan peribadinya adalah di dalam lingkungan bidang kuasa mahkamah biasa sama seperti rakyat biasa. Bil itu telah sehubungan itu diluluskan oleh Parlimen tetapi apabila dihantar kepada Yang di-Pertuan Agong untuk diperkenankan oleh Duli Yang Maha Mulia, Majlis Raja-Raja, melalui Yang di-Pertuan Agong, memberi alasan-alasan mengapa ia tidak boleh diperkenankan dan mencadangkan pindaan-pindaan untuk pertimbangan Parlimen. Berikutan itu, mengambilkira cadangan-cadangan Majlis Raja-Raja, Perdana Menteri telah mengusulkan di Parlimen supaya artikel 181(2) Perlembagaan Persekutuan dipinda dan artikel-artikel 182 dan 183 dimasukkan. Pindaan-pindaan dan tambahan-tambahan yang dicadangkan telah kemudiannya diluluskan oleh Parliamen (lihat ms 25G–26A).

(8) Dari penelitian ucapan Perdana Menteri, adalah jelas bahawa tiada sebutan sama sekali dibuat bahawa bidang kuasa eksklusif yang diberikan kepada Mahkamah Khas dengan mengecualikan mahkamah-mahkamah biasa berhubung Raja hendaklah termasuk seseorang yang melaksanakan fungsi-fungsi Raja (lihat ms 26C).]

Notes

For cases on the Federal Constitution generally, see 3(1) *Mallal's Digest* (4th Ed, 2000 Reissue) paras 1397–1403 and 1493.

For cases on the purposive approach, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1538–1563.

Cases referred to

Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345 (refd)

Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29 (folld)

Lam Kong Co Ltd v Thong Guan Co Ptd Ltd [2000] 4 MLJ 1 (folld)

Northman v Barnet Council [1978] 1 WLR 221 (refd)

Pepper v Hart [1993] 1 All ER 42 (refd)

United Hokkien Cemeteries, Penang v Majlis Bandaran, Pulau Pinang [1979] 2 MLJ 121 (folld)

Legislation referred to

Constitution (Amendment) Act 1993
Courts of Judicature Act 1964 ss 68(1)(a), 84(2)
Federal Constitution arts 160, 181,182, 183
Interpretation (Amendment) Act 1993 [Sing] s 2
Interpretation Acts 1948 and 1967 s 17A
Laws of the Constitution of Selangor 1959 art 21(4)

Appeal from: Suit No D1–22–1350 of 1998 (High Court, Kuala Lumpur)

Low Chi Cheng (*Wong Yoke Ping* with her) (*Lim Kian Leong & Co*) for the appellant.

Bastian Vendargon (*Philip Chai* and *Dhayana Shila* with him) (*Soo Thien Ming & Nashran*) for the defendants.

Abdul Aziz bin Abdul Rahim (*Syed Marzidy bin Syed Marzuki* with him) (Senior Federal Counsels) watching brief for the Attorney General.

Haidar FCJ (delivering judgment of the court): The matter before us is in respect of a reference of constitutional questions by the High Court pursuant to s 84 of the Courts of Judicature Act 1964 (Act 91) ('the CJA').

It was agreed by the parties as per order dated 30 July 2001 that the following questions be referred to the Federal Court for determination under s 84 of the CJA:

(1) Whether the plaintiff, the Regent of the State of Selangor, who is appointed to exercise the functions as 'Sultan' is a 'Ruler' for the purposes of arts 181, 182 and 183 of the Federal Constitution ('the Constitution') (as amended by AM Act A848) having regard to the aforesaid provisions and the interpretation of 'Ruler' as defined in art 160 of the Constitution?

(2) If the answer to (1) is in the affirmative, does the special court have exclusive jurisdiction to adjudicate on the plaintiff's claim to the exclusion of the High Court of Malaya?

(3) If the answer to (1) or (2) above is in the affirmative, does the special court have exclusive jurisdiction to adjudicate on the defendant's counterclaim to exclusion of the High Court of Malaya (subject to the Attorney General's consent pursuant to art 183 of the Constitution)?

(4) If the answer to (2) or (3) above is in the negative, do the ordinary courts which are constituted under Part IX of the Constitution have jurisdiction to adjudicate on the plaintiffs claim and the defendant's counterclaim?

There are other terms also embodied in the order dated 30 July 2001, inter alia, on costs. It was also ordered that all proceedings be stayed pending the decision of the Federal Court.

In order to assist the Federal Court in deciding the questions and as is provided by s 84(2) of the CJA, the following statement of agreed facts was filed therein by the parties:

A (1) On 6 May 1998, the plaintiff filed a writ summons and statement of claim against both defendants. The defendants' filed a defence and counterclaim or 3 July 1998 which was subsequently amended by court order dated 7 January 1999. A reply and defence to counterclaim was filed on 17 July 1998.

B (2) On 24 April 1999, the plaintiff was appointed Regent of Selangor to exercise the functions as 'Sultan' when His Highness's father, DYMM Sultan Salahuddin Abdul Aziz Shah Ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed to the throne as the 11th Yang Di-Pertuan Agong.

(3) On 27 July 1999, the plaintiffs solicitors, Messrs Lim Kian Leong & C Co, wrote to the Attorney General's Chambers to seek advice in respect of the further conduct of this matter. A response was received vide the letter dated 7 September 1999 from the Attorney General's Chambers slating that in light of His Highness's appointment as 'Regent', further action is to be commenced in the special court and the consent of the Attorney General will be required for the same. On 30 September D 1999, the defendant's solicitors, Messrs Soo Thien Ming & Nashrah wrote to the Attorney General's Chambers for consent that the defendants continue their counter claim in the special court.

(4) On 13 October 2000, both parties were granted audience with YB Tan Sri Datuk Sri Peguam Negara and issues of jurisdiction, E among others, were discussed.

(5) On 4 November 2000, the defendants' through their solicitors wrote to the Attorney General's Chambers expressing their reasons why the matter should continue in the High Court and not the special court and asking for confirmation that this matter be continued in the High Court and not the special court.

F (6) On 15 November 2000, a letter was issued by the Attorney General's Chambers indicating that this issue be determined by the High Court of Malaya.

(7) The defendants subsequently disagreed that the matter should proceed in the special court. The plaintiff filed two applications, one G to withdraw the claim in the High Court with liberty to file afresh in the special court ('application to withdraw') and the other to strike out the defendants' counterclaim. On 2 April 2001, the application to withdraw was heard by the learned senior assistant registrar and on 4 April 2001, she allowed the plaintiffs application to withdraw with costs to be taxed ('the said order'). Both parties lodged their appeals H on the said order.

(8) On 30 July 2001, the honourable judge, Mr Justice Datuk Vincent Ng Kim Khoay by consent ordered that a constitutional reference be made to the Federal Court under s 84 of the CJA of the questions which are hereinbefore attached, p 1 of the record of appeal.

I (9) The application to strike out the counterclaim, the appeals lodged by both plaintiff and defendants in respect of the said order is pending and is stayed in light of the reference.

(10) On 9 July 2001, the plaintiff filed their claim in the special court and the defendant entered conditional appearance

(11) This matter is also stayed pending the reference to the Federal Court.

After hearing counsel for both parties, we gave an oral judgment answering question (1) in the negative and in view of our answer to question (1), there was no need really to answer the remaining questions. It merely means that arts 181, 182 and 183 of the Constitution in relation to the jurisdiction of the special court are not applicable to the plaintiff though he has been appointed as a Regent to exercise the functions of Sultan (Ruler) under art 21(4) of the Laws of the Constitution of Selangor 1959 ('the LCS'), which reads:

> His Highness shall appoint a Regent or a Council Regency, as to Him seems most expedient to exercise his function as Sultan in the event of His being elected the office of the Yang di-Pertuan Agong or His exercising the functions of the office of the Yang di-Pertuan Agong for a period exceeding fifteen days.

It is to be noted that His Highness has a choice of appointing a Council of Regency instead of a Regent under cl 4 of art 21 of the LCS. It is a matter of the prerogative of His Highness.

When the suit was filed in the High Court at Kuala Lumpur by the plaintiff His Highness was not appointed the Regent yet. The plaintiff was appointed the Regent on 24 April 1999 when His Highness's father was appointed the 11th Yang di-Pertuan Agong. It matters not to us about the status of the plaintiff at the time of the filing of the suit as the issue before us is the interpretation of 'Ruler', that is, whether the plaintiff comes with the meaning of 'Ruler' under art 160 for the purposes of arts 181, 182 and 183 of the Constitution.

As intimated, we now proceed to give our reasons.

> 'Ruler' is defined under art 160(2) of the Constitution:
>
> (a) in relation to Negeri Sembilan, means the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs in accordance with the Constitution of that State: and
>
> (b) in the case of any State, includes *except in cl (2) of Art 181 and the Third and Fifth Schedules*, any person who in accordance with the Constitution of that State exercises the functions of the Ruler.
>
> (Emphasis added.)

Clause 2 of art 181 in its original form reads:

> No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity.

By the Constitution (Amendment) Act 1993 (Act A848) which came into force on 30 March 1993 cl 2 of art 181 was amended by the insertion of the words 'except in the special court established under Part XV' after the word 'capacity' The amended art 181(2) of the Constitution now reads:

> No proceedings whatsoever shall be brought in an court against the Ruler of

> a State in his person; capacity except in the special court established under Part XV

The purpose of the amendment to art 181(2) clearly was to take away the legal immunity hitherto enjoyed by the Ruler in respect of anything done or omitted to be done by him in his personal capacity. It seems clear to us that arts 182 and 183 were added in view of the amendment to art 181(2) which gives exclusive jurisdiction to the special court. These amendments were made at the proposal of the Conference of Rulers. We will touch on this later in this judgment.

Article 182 established the special court, the forum to hear any proceedings by or against the Ruler of a state in his personal capacity. Article 183 restricts the action, be it civil or criminal, against the suler of a rtate in respect of anything done or omitted to be done by him in his personal capacity except with the consent of the Attorney General personally. The purpose of this provision is to protect the Ruler of a State against any frivolous or vexatious litigation. Articles 182 and 183 were added by Act A848 and came into force on 30 March 1993. In short, any action or omission on the part of the Ruler of a state in his personal capacity, be it civil or criminal, the special court has the exclusive jurisdiction to adjudicate on them to the exclusion of the High Court.

We do not think it is beyond dispute that the original art 181(2) is meant to accord legal immunity to the Ruler of a State and not to any person exercising the functions of a Ruler. This is clearly shown by the exception to the meaning of 'Ruler' in art 160(2) para (b) of the Constitution which would otherwise includes any person exercising the functions of the Ruler of a State.

The Federal Court in *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 had the occasion to consider art 160(2) and the original art 181(2) of the Constitution. Though the Federal Court there was dealing with, inter alia, the legal immunity issue in respect of the Ruling Chiefs of Negeri Sembilan it points to the fact that legal immunity is accorded to the Ruler and not extended to a person exercising the functions of a Ruler. This is what Salleh Abas FJ (as he then was) in the majority judgment said at p 35:

> That the definition under art 160(2) is a functional one is clearly reflected by the second limb of the definition as regards other states. Here while the definition of 'Ruler' includes 'as person who in accordance with the Constitution of that State exercises the functions of the Ruler', it excludes such person from being regarded as a Ruler for the purpose of art 181(2), (dealing with judicial immunity), the First [should be Third?] Schedule (dealing with the election of the Yang di-Pertuan Agong) and the Fifth Schedule (dealing with the Conference of Rulers). Such exclusion is effected by the words 'except in art 181(2) and the Third and Fifth Schedules'. Thus, for these purposes, ie art 181(2), the Third and Fifth Schedules the status of a Ruler who is a descendent of a royal ancestor is preserved and not extended to others. He is a Ruler in the full sense of the word, both functionally and status wise.

Further, Suffian LP, in the same case, though delivering a dissent judgment, put legal immunity as usually an attribute of sovereignty (see p 38). Salleh Abas FJ, himself was of the same view when he said p 35, thus:

> It is the sovereignty possessed by the Rulers which make them immune from judicial proceedings in their personal capacity.

We respectfully agree with the views expressed therein. It follows that a person exercising the functions of a Ruler of a State cannot be said to possess sovereignty. Sovereignty, in our view, is personal to the Ruler. Counsel for the plaintiff at p 4 of her skeletal submission conceded that in regard to art 181(2) the plaintiff is not considered a Ruler but contended that the plaintiff is a 'Ruler' for the purposes of arts 181(1), 182 and 183 of the Constitution. Simply put, the meaning of 'Ruler' in art 160(2) excludes the plaintiff from art 181(2), the Third and Fifth Schedules but not arts 181(1), 182 and 183. The counsel for the plaintiff took, in our view, a literal approach to the interpretation of the relevant articles and at first blush, she would appear to be right.

However, counsel for the defendants urged upon us to consider the purposive approach to remedy the anomaly or the mischief rule of interpretation ought to be used in the interpretation of the amended art 181(2) and arts 182 and 183 ofthe Constitution. Can we adopt this approach?

The purposive approach has been adopted by our courts following the English cases. Chang Min Tat FJ, speaking for the Federal Court in *United Hokkien Cemetries, Penang v Majlis Bandaran, Pulau Pinang* [1979] 2 MLJ 121 in considering whether the columbarium should be exempted from assessment just like the cemetery grounds and the crematorium, stated at p 123:

> The question of the determination of the exact nature and extent of a taxing act is rather different from that of the nature and extent of exemptory provisions. Then, in my view, it is a matter for the purposive approach to replace the literal. As was said by Lord Diplock in *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850 at p 899, the literal method of construction is now completely out of date and has been replaced by a 'purposive approach'. It ought to be noted that this purposive approach is not a modem fashion. Since the 17th century, it has been the task of the judiciary to interpret an Act 'according to the intent of them that made it': Coke 4 Inst 330.

On the same page, His Lordship proceeded to quote a passage in *Northman v Barnet Council* [1978] 1 WLR 221 where Lord Denning MR said at p 228:

> In all cases now in the interpretation of statutes, we adopt such a construction as will 'promote the general legislature purpose' underlying the provision. It is no longer necessary for judges to wring their hands and say: 'There is nothing we can do about it.' Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it — by reading words in, if necessary — so as to do what Parliament would have done, had they had the situation in mind.

This purposive approach has now been given statutory recognition by our Parliament enacting s 17A in the Interpretation Acts 1948 and 1967 (Act 388) ('the Acts') which reads:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

Recently, the Federal Court in a majority judgment in *Lam Kong Co Ltd v Thong Guan Co Ptd Ltd* [2000] 4 MLJ 1, Mohamed Dzaiddin FCJ (now CJ Malaya) took the purpose or object of the legislature as provided by s 17A of the Acts for the construction of s 68(1)(a) of the CJA on the 'filter' principle. In view of the statutory recognition we can and should adopt a purposive approach in the interpretation of 'Ruler' for the purposes of arts 181, 182 and 183 of the Constitution.

In pursuing the purposive approach, one of the matters that can assist this court in interpretating the amended art 181(2) and arts 182 and 183 of the Constitution is to refer to the Parliamentary reports or Hansard. This is permissible as held by the Federal Court in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345. This is what Edgar Joseph Jr FCJ, speaking for the court, after reviewing a number of cases from different jurisdictions, said at p 360:

> We have also considered the cogent criticisms of the majority view in *Pepper v Hart*, by Mr JH Baker in his article entitled 'Statutory Interpretation and Parliamentary Intention' (1993) 52 Lamb LJ 353; by Mr Brian Davenport in his article entitled 'Perfection — But At What Cost?' (1993) 109 LQR 149; and Mr David Miers in his article entitled Taxing Perks And Interpreting Statutes' (1993) 56 MCR 695 Nevertheless, have arrived at the conclusion that we should follow the recent trend of the cases decided in the United Kingdom, Australia, New Zealand and Singapore and permit a relaxation of the exclusionary rule by allowing a reference to *Hansard* as an *aid* to statutory interpretation where the enactment is ambiguous or obscure, or which if literally construed might lead to absurdity and provided always that the statement reported in *Hansard* was made by a Minister or other promoter of a Bill. More particularly, we gratefully adopt the passage in the judgment of Lord Browne-*Wilkinson in Pepper v Hart*, reproduced above.

The passage quoted with approval in *Pepper v Hart* [1993] 1 All ER 42 at p 64; [1992] 3 WLR 1032 at p 1056 by Edgar Joseph Jr FCJ, is at p 359:

> My Lords, I have come to the conclusion that, as a matter of law, there are sound reasons for making a limited modifications to the existing rule (subject to strict safeguards) unless there are constitutional or practical reasons which outweigh them. In my judgment, subject to the questions of the privileges of the House of Commons, reference to Parliamentary material should be permitted as an *aid* to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee any

> statement other than the statement of the minister or other promoter of the Bill is likely to meet these criteria.

However, we note and agree with the caution put forth by Edgar Joseph Jr FCJ, on the same page as follows:

> We hasten to add, however, that when resort to Hansard J permissible, that by itself although meriting serious consideration cannot be determinative of the issue since it is only available as an *aid* to interpretation. To hold otherwise would amount to substituting the words of the Minister or other promoter of the Bill for the words of the statute, and that cannot be the law.

We also note that Singapore courts have followed the major judgment in *Pepper v Hart*. Indeed the rule in *Pepper v Hart* has now received statutory recognition in Singapore by way of s 2 of the Interpretation (Amendment) Act 1993. May be it is time such a provision given statutory recognition in our Interpretation legislation as with s 17A referred to earlier. It will give statutory force to the courts to look the policy speech of the Minister or the promoter of the Bill in *Hansard* for the purpose of an *aid* to the interpretation of statutes.

Before proceeding to consider the purposive approach as urged upon us by counsel for the defendants, we need to give consideration to the submission of counsel for the plaintiff on the interpretation of 'Ruler' for the purposes of arts 181, 182 and 183 of the Constitution. The issue is whether the said articles are ambiguous or obscure or the literal meaning of which leads to absurdity. The argument of counsel for the plaintiff was put this way.

The meaning of 'Ruler' in art 160(2) of the Constitution does not refer to the Ruler of a State per se, but also includes any person who in accordance with the Constitution of a State exercises the functions of the Ruler. It was therefore submitted that the plaintiff as the Regent who exercises the functions as Sultan (ie the Ruler of the State) by virtue of art 21 of the State Constitution of Selangor, comes within the meaning of 'Ruler' in art 160(2) para (b). It was, however, conceded by the counsel for the plaintiff that in the meaning of 'Ruler' in para (b) of art 160(2) there are three circumstances where, as she put it, this wide meaning of 'Ruler' is excluded:

(a) article 181(2);
(b) the Third Schedule;
(c) the Fifth Schedule.

She concluded that the plaintiff, therefore, is a 'Ruler' for the purposes of arts 181, 182 and 183 of the Constitution though for the purposes of art 181(2) she conceded that the plaintiff is not considered a 'Ruler'. We would for completeness add that for the purposes of the Third Schedule (dealing with the election of the Yang di-Pertuan Agong) and the Fifth Schedule (dealing with the Conference of Rulers) the plaintiff is not considered a 'Ruler' as well. Her contention is that the meaning of 'Ruler' in art 160(2) para (b) was not amended to exclude arts 182 and 183 like art 181(2). In other words, art 160(2) remains intact.

Counsel for the defendants argued that the literal interpretation adopted by the counsel for the plaintiff on the meaning of 'Ruler' for the purposes of arts 181, 182 and 183 would lead to an undesirable situation or absurdity. He put his argument in this way.

It is not disputed that prior to the amendment of art 181(2) and the addition of arts 182 and 183, only the Ruler of a State enjoys legal immunity by virtue of the exception given to the meaning of a 'Ruler' in para (b) of art 160(2) of the Constitution. The legal immunity does not extend to a person exercising the functions of a Ruler like the case of the plaintiff. This is the situation prior to the amendment and the addition of the relevant articles of the Constitution.

Granted that the meaning of 'Ruler' in art 160(2) remaining intact, it can give rise to two interpretations of 'Ruler' for art 181(2) and arts 182 and 183:

(a) article 181(2) does not extend to a person exercising the functions of the Ruler.

(b) articles 182 and 183 would appear to include a person exercising the functions of the Ruler.

That is if the literal approach of interpretation is taken. Such an interpretation would lead to an ambiguity and absurdity as a Regent exercising the functions of the Ruler is not a Ruler for the purposes of art 181(2), the Third Schedule and the Fifth Schedule and hence the Regent can be sued in the ordinary courts as the establishment of the special court by the amendment to art 181(2) is exclusively reserved to the Rulers personally in respect of actions in their personal capacity but for the purposes of arts 182 and 183, he is the Ruler and shall sue or be sued in the special court for the reason that the meaning of 'Ruler' in art 160(2) para (b) remain intact.

We then have the awkward situation where art 181(2) excludes the Regent who exercises the functions of the Ruler from the jurisdiction of special court and he is within the jurisdiction of the ordinary courts for actions in his personal capacity whereas arts 182 and 183 would appear to confer the jurisdiction of the special court exclusively to him as well when exercising the functions of the Ruler by virtue of art 182. Article 182(2) reads:

> Any proceedings by or against the Yang di-Pertuan Agong or the Ruler of a State in his personal capacity shall be brought in a special court established under cl (1).

This ambiguity will lead to problems to the ordinary citizens who wish to sue the Regent, that is, which provision shall prevail. Article 181(2) of the Constitution read with art 160 or art 182(2) and art 183 of the Constitution?

There is the further absurd situation herein. As stated earlier in this judgment, there is the prerogative of the Ruler to appoint a Council of

Regency as well. We have examined the constitution of all the Malay States and this provision is common to all the Malay States. In the event a Council of Regency is appointed in place of a Regent, is it intended that the members of the Council of Regency when collectively exercising the functions of the Ruler is a 'Ruler' for the purposes of arts 181, 182 and 183? A member of the Council of Regency need not be appointed from members of the Royalty and is it intended therefore that an ordinary person as in the case of Trengganu recently, as was told to us by the counsel for the defendants, would come within the meaning of 'Ruler' also? With respect, we did not think so as it will lead to absurdity. By way of analogy, the reasoning in *Dato Menteri Othman*'s case regarding legal immunity to the Ruling Chiefs would support our view.

In order to resolve the ambiguity or absurdity situation, we need to consider the purpose or object of establishing the special court, that is, whether the exclusive jurisdiction of the special court to try offences committed in the Federation by the Ruler of a State and all civil cases by or against the Ruler of a State notwithstanding where the cause of action arise is to include a person exercising the functions of the Ruler of a State as in the case of the plaintiff here?

As stated earlier s 17A of the Acts (effective from 24 July 1997 vide Act A996/97) now permits for a purposive approach quite apart from the authorities cited earlier on. It has been given, so to say, statutory recognition. A reading of arts 182 and 183 under Part XV of the Constitution showed the composition, jurisdiction, powers, procedure of the special court including the requirement of the consent of the Attorney-General personally in respect of action, civil or criminal, to be instituted against the Ruler of a State in respect of anything done or omitted to be done by him. These are matter of details.

The important matter that need to be considered is the purpose or object of the establishment of the special court, which is the amendment to art 181(2). Once the object or purpose is determined it follows, in our view, that the special court stated under Part XV must necessarily be read with the object or purpose of the amendment to art 181(2). Such a construction will promote the general legislative purpose underlying the provision in line with s 17A of the Acts. Once such a construction is given, the word 'Ruler' in arts 182 and 183 should and must mean 'Ruler' referred to in art 181(2) read with art 160(2) para (b). As is not disputed 'Ruler' under art 160(2) para (b) for the purposes of art 181(2) excludes a person exercising the functions of the Ruler and it follows that 'Ruler' under arts 182 and 183 is not intended to include a person exercising the functions of the Ruler as in the case of the plaintiff. The exclusive jurisdiction of the special court as envisaged in the amendment to art 181(2) is to be accorded to the Ruler and not to a person exercising the functions of the Ruler by virtue of the exception to art 160(2) para (b) of the Constitution. To read art 182(2) in isolation without reference to the intent and purpose of the amendment to art 181(2) would lead to an absurd situation. As conceded by the counsel for the plaintiff art 181(2) does not cover a person exercising the functions of the Ruler and the amendment to art 181(2) giving the exclusive jurisdiction of the special court to the Ruler of a State therein similarly cannot be intended to include a person exercising the functions of the Ruler as in the case of the plaintiff.

In addition thereto, it is permissible for the courts, as held by the Federal Court in *Chor Phaik Har*, to resort to the Hansard as an *aid* to interpretation. We can therefore look at the policy speech of the Minister when tabling the Bill for the purpose or the object of the Bill as an *aid* to interpretation.

The Bill to amend the Constitution was first moved by the Prime Minister on 18 January 1993. In his speech, the Prime Minister touched on the history of the Rulers from the time of the British Rule and concluded that legal immunity was accorded to the Rulers in view of the sovereignty possessed by the Rulers. However, in view of the happening of certain events involving one or two Rulers, the Government thought it was time that the citizen be given protection and farther, the role of a Ruler being a Constitutional one, the legal immunity hitherto enjoyed by the Rulers in their personal capacity should be removed.

The Bill of 18 January 1993 in its original form for the purpose of the removal of the legal immunity, inter alia, proposed amendments to arts 32 and 181 of the Constitution. The original proposed amendments to art 181 as per cl 7 of the Bill read:

> (a) in cl (2), by substituting for the words 'in his personal capacity' the words 'in respect only of anything done or omitted to be done by him in the exercise or purported exercise of his functions under any written law': and
>
> (b) by inserting, after cl (2), the following clause:
>
> (3) Any law which provides for the immunity of the Ruler of a State in his personal capacity from any proceedings whatsoever in any court, or attaches sanctity to his residence, shall to that extent be void.

A saving provision was provided by cl 8 which reads:

> For the avoidance of any doubt, it is hereby declared that no proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity in respect of anything done or omitted to be done by him before the coming into force of this Act.

It is clear therefore that the intention of the legislature in the proposed amendments was to remove altogether the legal immunity hitherto given to the Ruler of a State. It means that any legal proceedings by or against the Ruler in his personal capacity will be within the jurisdiction of the ordinary courts just like the ordinary citizen. The Ruler's legal immunity is preserved in respect of his functions under any written law.

The Bill was accordingly passed by Parliament. However, when the Bill was sent to the Yang di-Pertuan Agong for His Highness's assent, the Prime Minister informed Parliament that the Conference of Rulers, through the Yang di-Pertuan Agong, gave the reasons why no assent could be given and suggested amendments for the consideration of Parliament. It was in this situation that the Prime Minister moved the Bill again on 8 March 1993 and taking into consideration the proposals of the Conference of Rulers moved in Parliament for art 181(2) be amended and arts 182 and 183 under a new Part XV be added. The proposed amendments and additions were subsequently passed by Parliament.

This is what the Prime Minister said, inter alia, at p 13986 of the *Hansard* in moving the Bill again on 8 March 1993:

> Sekarang ini diperuntukkan suatu badan khas untuk membicarakan Raja-raja yang melakukan kesalahan di bawah undang-undang negara. Mahkamah Khas yang ditubuhkan ini bukan untuk rakyat, tetapi untuk Raja. Ini tidak melucutkan keistimewaan Raja daripada segi tidak boleh didakwa di mahkamah biasa, tetapi menambah keistimewaan itu dengan mewujudkan satu mahkamah yang khas bagi Raja.

From the above passage and from a perusal of the speech of the Prime Minister it is clear that no mention was made at all that the exclusive jurisdiction given to the special court to the exclusion of the ordinary courts in respect of the Ruler is to include a person exercising the functions of the Ruler. Clearly, the object or purpose of the amendment to art 181(2) and the addition of arts 182 and 183 was a compromise to the Rulers where their legal immunity was taken away in respect of any legal proceedings in their personal capacity. The mischief that was aimed by the amendment to art 181(2) and the addition of arts 182 and 183 clearly was to take away the legal immunity hitherto enjoyed by the Rulers and the establishment of the special court was a compromise. If the literal approach of interpretation is taken as submitted by the counsel for the plaintiff it will lead to absurdity for the reasons stated earlier on.

For the record, Dato' Abdul Aziz, Senior Federal Counsel, appearing for the Attorney-General by way of watching brief, supported the submission of counsel for the defendants.

In the circumstances and for the reasons stated, we answered the first question in the negative. In view of our answer to the first question, there would be no need really to answer the remaining question as it is clear that only the Rulers and not the persons exercising the functions of the Rulers have the exclusive recourse to the special court.

By consent, each party agreed to bear his own costs of the proceedings before us.

My learned CJ (Malaya), has seen my judgment and agreed with the reasons stated therein.

Order accordingly.

Reported by Lim Lee Na